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Juvenile should be Treated and Tried as Adults in Rape Cases

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ABSTRACT

Juvenile committing crimes is a serious offence and it is detrimental for the social order in any country. There is a recent increase in trend of juvenile crimes world-wide, with more and more involvement of the youth in violent crimes. India shows similar trends in the increasing rate of violent crimes committed by juveniles. It is a very serious issue in front of the nation, and need for strong solutions to end the problem. Indian legal system and judiciary have responded to these trends and have brought some amendments to the laws pertaining to juvenile justice in India. The analysis of statistical data available at official sites indicates the increasing involvement of juveniles in heinous crimes. To contain the problem of juvenile crime in India, the Act has been amended, and now trial of juveniles involved in heinous crimes is held as adults.

Juvenile Justice (Care & Protection of Children) Act, 2015 is an Act which has been passed by the Parliament of India amidst intense controversy, debate and the protest on many of its provisions by child rights fraternity. There is Juvenile Justice Act has been replaced by the Juvenile Delinquency Law, Juvenile Justice (Care & Protection of Children) Act 2000 and allows for juveniles in conflicts with law in the age group of 16-18, involved in Heinous offences, to be tried as adults. This Act came into force from 15 January 2016. But it was passed on 7 May 2015 by the Lok Sabha and further it was passed on 22 December 2015 by the Rajya Sabha. The Bill allow a Juvenile Justice Board, which would include Psychologists and Sociologists, to decide whether a Juvenile criminal in the age group of 16-18 should tried as an adult or not. The new bill introduced the concept from Hague Convention on Protection of Children & Co- operation in respect of Inter- Country adoption, 1993 which were missing in the previous Act.

The Ministry of Women and Child Development began contemplating several desired amendments in 2011 and a process of consultation with various stake holders was initiated. The Delhi gang rape case in December 2012 has tremendous impact on public perception of the act. One of the Accused in the 2012 Delhi gang rape case was few months younger than 18 years of

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age. He was tried by the in a Juvenile court and further sentenced to 3 years in a reform home. There were eight Writ Petition alleging that the act and its several provisions are unconstitutional were heard by the Supreme Court of India in the second week of July 2013 and were dismissed, holding the act to be Constitutional. Demands for the reduction of the age of juveniles from 18 to 16 years were also turned down by the Supreme Court, when the Union of India stated that there is no proposal to reduce the age of a juvenile.

In July 2014, Minister of Women and Child Development, Maneka Gandhi said that they were preparing a new law which will allow 16 years old to be tried as an adult. She said that 50% of Juvenile crimes were committed by teens who thought that they get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults, would scare them. The bill was introduced in the parliament by Maneka Gandhi on 12 August 2014. On 22 April 2015, the cabinet cleared the final version after some changes. The crime will be examined by the Juvenile Justice Board to ascertain if the crime was committed as a 'child' or an 'adult'.

There were various criticism in the Lok Sabha during the debate which was held in the month of May 2015, Shashi Tharoor, an Indian National Congress(INC) Member of the Parliament (MP), Argued that the law was in the contradiction with the International Standards and that most children who break the laws are from the poor and illiterate families. He said that they should be educated instead of being punished. Child Rights Activists and Women Rights Activists have called the bill a regressive step and have criticized the bill. Many experts and activists viewed post December 2012 Delhi Gang Rape responses as creation of media sensationalisation of the issue, and cautioned against and regressive move to disturb the momentum of Juvenile Justice Legislation in the country.

As in this new Amendment Act which has a juvenile Justice board under Section 4 of the Act and which it consisted of a Metropolitan Magistrate or Judicial Magistrate of first class with at least 3 years of experience and two social workers among them one shall be woman. And this board follows the legal procedure and the procedure is given in this act for the offence committed by the children between the age group of 16 – 18 years. There is also a process of rehabilitation and social re- integration which is on the basis of the individual care plan of the child which is preferably through family based care as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster and this part is covered Section 39 of the Act. There are powers conferred under Section 19 of the said act to the children's court i.e. if there is a need for an trail of the child as an adult under Criminal Procedure code, 1973 (Cr.P.C) so the court may pass appropriate order and if there is no need of trail of the child as

an adult and may conduct inquiry as a Board and pass appropriate orders in accordance with the provisions in the act. There is a special provisions and procedures for the adoption, including inter- country adoption in the Chapter VIII of the said Act. In case of any reasonable doubt it shall undertake the process of age determination by seeking the evidence such as date of birth certificate from school or matriculation or equivalent certificate from absence of the birth certificate. The New Act under Section 86 also classifies the offences based on the gravity of offences into three categories – Petty, Serious and Heinous crimes this is because of the outrage caused by the people after Delhi Gang rape case, where one of them accused was tried as a juvenile merely as age also being the primary factor.

Under this act there is a law relating to the children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic need through proper care, protection, development ,treatment, social re-integration and by adopting child –friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewithor incidental thereto. provisions in it which provides the General principles and procedure of care and protection to them, rehabilitation and social Re-Integration, adoption, child welfare committee and other offences against the children such as employment of child for begging, cruelty against child, exploitation of a child, there is also a provisions in which the offences committed by a child, etc and also such actions are taken in the good faith of the child and also for the well being of the child. This whole act looks into the justice system related to the children between the age group of 16-18 years.

There are few pros and cons of juveniles being tried as an adult such as are follows:-

PROS:-

- 1) Brings justice for extreme crimes – while juveniles may be kids, they should have the ability to distinguish right from wrong especially in extreme circumstances. Victims and the families of victims still deserve a sense of justice if one of their family members is affected or even killed by juvenile offender.
- 2) Courts focus on age instead of crime – The juvenile courts have a strong tendency to only focus on the age of the offender rather than the actual nature and reason for the crime that they committed.
- 3) Mature mental ability beings much earlier – The majority of states consider children to be adults at the age of 18. This is a very high number because teenagers have full control over

their thoughts and actions. If they do not have the moral compass in them at that time, then they are likely to cause crime.

- 4) Juvenile crimes on the rise – In the past few years we had record numbers of crimes being committed by juvenile offender. Many of them are aware of just how flawed the juvenile justice system is, and use that to their advantage.
- 5) The right to trial by jury – The juvenile courts do not have a jury, and offender are not given a proper trial. Instead the judge makes all of the decisions, often with the help of team of mediators for the children and their families.

CONS:-

- 1) Put young offender at high risk – One of the biggest problems of a young offender being tried as an adult is the fact that they could possibly be sent to an adult correctional facility. This is a very dangerous situation, especially if they are very young.
- 2) Message of lost hope – By giving juveniles extremely hard sentences, it gives the impression that there is no hope for their future and no hope of them ever becoming anything but a criminal and a convict.
- 3) Judges don't have much variety for punishment – Judges in Juveniles courts have the power to impose curfews, house arrest, and counseling to offenders, rather than send them to jail. On the other hand judges in adult courts have much fewer options, and usually choose the prison one.
- 4) More likely to commit more crimes – When you put a juvenile in a situation with seasoned criminals, such as adult prison, they are still impressionable and likely end up becoming involved in gang or other crime activities. This further hinders their ability to rehabilitate after they are released.
- 5) Criminal record follow– Crimes that are on your juvenile records holds much less weight in the world than those on your adult record. By putting a juvenile into adult court, you are also affecting their adult criminal record. This will follow them all thought out life, especially when trying to get a decent job.

The juvenile justice system was originally created to provide individualized rehabilitation to offenders of minor crimes such as truancy, shoplifting, and vandalism. But youth today are taking advantages of this lenient and outdated system and are committing violent crimes because they believe they will get off easy. In order to provide justice to victims and their families and to prevent more and more juveniles from committing violent crimes, the United

States must hold criminals accountable of their age and impose a tough punishment system. To that end, juveniles should sometimes be tried as adults. Children are killed by children. Teen are killed by teens. And still we refuse to punish them because “*they are too young to understand that they are doing is wrong*”. An excuse most heard from parents, it is also an excuse too often heard after lives are lost and ruined. Without a tougher punishment system, society is left with a high percentage of delinquents and a rising percentage of crime victims. Some youths are even known to commit crimes without thought because they know they cannot be tried as an adult.

In conclusion, juvenile criminals such as murderers, rapists and violent individuals, should be tried as adults and receive serious punishments. Just as their age does not prevent them from committing these heinous crimes, so should it not deter them from receiving the maximum penalties to enforce accountability for actions and punishment. The juvenile justice system primarily works to reform and punish offenders and prepare them for their good future. Nevertheless, since some of the criminalities committed are extreme, the system decides otherwise. Bumping juveniles to adults courts, however, is wrong as not only does it infringe on their constitutional rights, it subjects them to manner of harm and abuse, fails to caution the society on the resulting human beings the process produces and creates a more significant problem of recidivism. Hence, minors must be fully for their behavior if we are to deter future delinquents from committing violent crimes.
